

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-196181

September 23, 1980

S. Neil Hosenball, Esq.
General Counsel
National Aeronautics and
Space Administration
400 Maryland Avenue, SW
Washington, DC 20546

15017
Mr. Barclay
PLM
[NASA Performance Awards]

Dear Mr. Hosenball:

Your letter of September 17, 1980, refers to the question of recovery by NASA of amounts already paid to senior executives as performance awards under 5 U.S.C. 5384 during fiscal year 1980. In response to your request that I review the matter, this is to advise that in my opinion NASA does not have a legally supportable basis for effecting recoveries.

As I understand it, NASA paid awards to some 46 percent of its personnel holding senior executive positions which payments when made were within the 50 percent limitation of the Civil Service Reform Act and OPM guidance. The fact that subsequent legislation restricted performance award authority to 25 percent of such positions does not serve to affect authorized awards made prior to the later enactment, notwithstanding the fact that the more limited authority was spelled out in terms applicable to the full fiscal year during which the awards in question were granted.

As you know, there are any number of court opinions and opinions of the Comptroller General in support of that conclusion. It would surprise me greatly if a court were to rule otherwise in regard to the instant situation.

Sincerely yours,

Milton J. Socolar

Milton J. Socolar
General Counsel

